

ESTTA Tracking number: **ESTTA704736**

Filing date: **10/27/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Aspire Beverage Company, LLC
Granted to Date of previous extension	10/28/2015
Address	8787 Ridge Ponds Lane Victoria, MN 55386 UNITED STATES
Attorney information	KAREN D MCDANIEL BRIGGS AND MORGAN PA 80 SOUTH 8TH STREET, 2200 IDS CENTER MINNEAPOLIS, MN 55402 UNITED STATES kmcdaniel@briggs.com, kjuricko@briggs.com, ip@briggs.com, drosenberg@briggs.com Phone:612-977-8237

Applicant Information

Application No	86472007	Publication date	06/30/2015
Opposition Filing Date	10/27/2015	Opposition Period Ends	10/28/2015
Applicant	Aspire Brands Inc, 200 E Illinois St Chicago, IL 60611 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2010/03/24 First Use In Commerce: 2012/03/02
All goods and services in the class are opposed, namely: Beverages with a tea base

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85858095	Application Date	02/22/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ASPIRE BEVERAGE COMPANY, LLC		

Design Mark	Aspire Beverage Company, LLC
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Sports drinks

Attachments	85858095#TMSN.png(bytes) Notice of Opposition.pdf(214013 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Karen D. McDaniel/
Name	KAREN D MCDANIEL
Date	10/27/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Aspire Beverage Company, LLC,

Opposer,

v.

Aspire Brands, Inc.

Applicant.

Opposition No. _____

Serial No. 86/472,007

Mark: ASPIRE

NOTICE OF OPPOSITION

Aspire Beverage Company, LLC (“Opposer”), a corporation duly organized and existing under the laws of Minnesota, with a mailing address of 5500 Lincoln Drive, Suite 170, Edina, Minnesota 55436, believes it will be damaged by registration of the ASPIRE mark shown in United States Trademark Serial No. 86/472,007 filed on December 4, 2014 by Aspire Brands Inc. (“Applicant”) with a mailing address of 200 East Illinois Street, Suite 3611, Chicago, Illinois, 60611, and hereby opposes the same. Concurrent with this Notice of Opposition, a Motion to Suspend Proceedings is also being filed, on the grounds set forth therein, and as further described below.

The grounds for Opposition are as follows:

1. Opposer is a manufacturer of beverages, and in particular, sports drinks.
2. Opposer’s brand covers products sold under the ASPIRE name, the subject of the

following U.S. Trademark Application owned by Opposer:

U.S. Application No. 85/858095 for **ASPIRE BEVERAGE COMPANY LLC** used in connection with sports drinks, in International Class 32. Said application was filed on February 22, 2013, on an intent-to-use basis. Since the time of the filing, Opposer has used the mark on goods in commerce.

3. Opposer's application was filed prior in time to Applicant's application. Further, goodwill and consumer recognition were built up by Opposer through use and development of the name ASPIRE in advertising and product sales.

4. Notwithstanding Opposer's rights in and to its ASPIRE trademark, on December 4, 2014 Applicant filed an application to register the trademark ASPIRE for use in connection with the same or a similar product that directly competes with Opposer's product sold under the ASPIRE name.

5. Applicant's ASPIRE application was assigned Serial No. 86/472,007 and was published for opposition in the Official Gazette on June 30, 2015 in association with "Beverages with a tea base."

6. Applicant's mark ASPIRE is confusingly similar to Opposer's earlier filed trademark application for ASPIRE BEVERAGE COMPANY LLC. The marks are essentially identical, and the goods are the same or highly similar so that there would be a likelihood of confusion, mistake and deception. Registration and use of Applicant's mark in association with the products identified in the trademark application is likely to cause confusion, mistake and deception.

7. On August 20, 2015, The Trademark Office suspended examination of Applicant's application Serial No. 86/472,007, in response to a Letter of Protest filed by Opposer. The suspension is to remain in effect until Opposer's application is either registered or abandoned.

8. In its Suspension letter, the Trademark office noted that registration of the Applicant's applied-for mark will be refused if the pending mark matures to registration because of a likelihood of confusion with the cited registration. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq.

9. After noting that in any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services, the Trademark Office went on to recite the reasons that confusion was likely in this case.

10. The Trademark Office noted that the “Applicants’ mark is ‘ASPIRE’ and the pending mark is ‘ASPIRE BEVERAGE COMPANY, LLC.’ Consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (‘it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered’ when making purchasing decisions). Here, applicant’s entire mark is identical to the first term in the pending mark, and the remaining terms in the pending mark are merely descriptive or generic terms that have little or no source indicating value in a likelihood of confusion analysis.”

11. The Trademark Office also noted the similarity of the goods in question. It stated that “the goods for the pending application are identified as ‘sports drinks’ and applicant’s goods are identified as ‘beverages with a tea base.’ Should the pending mark mature to registration, the examining attorney will attach evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence will show that the goods listed therein, namely ‘sports drinks’ and ‘beverages with a tea base’, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).”

12. As the Trademark Office noted, the similar nature of the goods accentuates the similarity between the marks and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to source, sponsorship or affiliation. Applicant's goods and Opposer's goods are likely to be purchased by the same or similar consumers. Applicant's goods and Opposer's goods sold under the mark(s) are sold in the same or similar commercial channels.

15. The conditions surrounding the marketing of Applicant's and Opposer's goods are such that they are likely to be encountered by the same purchasers under the same or similar circumstances that could give rise to the mistaken belief that the goods originate from a common source, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

16. Because jurisdiction of Applicant's application Serial No. 86/472,007 has been restored to the trademark examining attorney, Opposer also requests suspension of this Opposition, as requested in the accompanying Motion to Suspend Proceedings. TBMP § 312.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and requests that registration of the proposed mark ASPIRE be denied. Please direct all correspondence to the attention of:

Karen McDaniel
Briggs and Morgan
2200 IDS Center, 80 South 8th Street,
Minneapolis, MN 55402-0910
Tel: 612-977-8237
Fax: 612-977-8650

Please charge Deposit Account No. 023732 in the amount of \$300 for the filing fee required by 2.6(a)(17) for this Notice of Opposition. Please charge any underpayment or credit any overpayment to Deposit Account No. 023732.

Respectfully submitted,

ASPIRE BEVERAGE COMPANY, LLC

By its attorneys,

Date: October 27, 2015

/Karen D. McDaniel/
Karen D. McDaniel
BRIGGS AND MORGAN
2200 IDS Center, 80 South 8th Street,
Minneapolis, MN 55402-0910
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served, via first-class mail, postage prepaid on this 27th day of October, 2015.

Lynn A. Sullivan
Leydig Voit & Mayer Ltd.
180 N. Stetson
Two Prudential Plaza Suite 4900
Chicago, IL 60601

/Kim R. Wollan/
Kim R. Wollan